

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SUSAN ROCKE and JEFFREY ROCKE,) Case No. 5:13-cv-02951-PSG
Plaintiffs,)
v.) **ORDER GRANTING LEAVE TO AMEND**
PEBBLE BEACH COMPANY,)
Defendant.)
PEBBLE BEACH COMPANY,)
Third Party Plaintiff,)
v.) **(Re: Docket No. 88)**
WILLIAM C. MEFFORD, ET AL.,)
Third Party Defendants.)

Third Party Defendant Groza Construction, Inc. moves for leave to file a first amended third party complaint to add current Defendant and Third Party Plaintiff Pebble Beach Co. as a

1 Third Party Defendant and add causes of action for reformation and declaratory relief.¹ Because
2 Groza Construction has shown good cause, its motion is GRANTED.

3 The court's case scheduling order set Aug. 18, 2014 as the deadline for joining additional
4 parties and amending the pleadings.² Groza Construction's motion comes well outside that
5 deadline, and so under Rule 16(b)(4), Groza Construction must show "good cause" to modify the
6 scheduling order. The "'good cause' standard primarily considers the diligence of the party
7 seeking the amendment."³

8 Here, Groza Construction acted diligently in seeking the amendment and so good cause
9 plainly exists. Groza Construction deposed Steven Aitchison, Senior Vice President of Capital
10 Improvements at PBC, on August 27, 2015, and learned that when he signed the contract between
11 Groza Construction and PBC, he believed the contract required Groza to indemnify PBC only for
12 Groza Construction's negligence, not PBC's negligence or anyone else's.⁴ Groza Construction
13 already knew that Brian Groza, Groza Construction's 30(b)(6) witness on the contract, also
14 believed that this was the meaning of the indemnity clause.⁵ When Groza Construction learned
15 that its mistaken belief as to the meaning of the contract was mutual, it promptly moved for leave
16 to add PBC as a third party defendant and add claims against PBC for reformation of the contract
17 based on mutual mistake and declaratory relief that the indemnity provision as written is void and
18 severable.⁶ Put differently, the facts underlying Groza Construction's new claims were presented
19 for the first time at Aitchison's Aug. 27, 2015 deposition, Groza Construction received the
20 deposition transcript on Sept. 10, 2015, and Groza Construction filed its motion on Sept. 11, 2015.⁷

21 ¹ See Docket No. 88.

22 ² See Docket No. 39 at 1.

23 ³ *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

24 ⁴ See Docket No. 88 at 4.

25 ⁵ See *id.*

26 ⁶ See Docket No. 97 at 7.

27 ⁷ See *id.*

1 Given this speedy pace, Groza Construction acted diligently in moving for leave and thus satisfied
2 Rule 16(b)(4)'s good cause requirement for modifying the scheduling order.

3 PBC argues that there is a presumption that it will be prejudiced by the amendments,
4 because Groza Construction did not seek leave to amend until late in the case.⁸ PBC also argues
5 that the amended claims will require significant discovery.⁹ However, as discussed above, the
6 court finds that Groza Construction acted diligently in seeking amendment. As for discovery, fact
7 discovery remains open for more than two months, which should provide the parties with sufficient
8 time for conducting discovery on the amended claims.

9 Groza Construction's request for leave to amend is GRANTED.

10 **SO ORDERED.**

11 Dated: October 27, 2015

12 
PAUL S. GREWAL
13 United States Magistrate Judge

26 ⁸ See Docket No. 93 at 15.

27 ⁹ See *id.*